



PROPOSED RULE MAKING

CR-102 (June 2004)**(Implements RCW 34.05.320)**Do **NOT** use for expedited rule making**Agency:** Department of Ecology AO # 10-13

- ☒ **Preproposal Statement of Inquiry was filed as WSR 10-17-126 ; or**
☐ **Expedited Rule Making--Proposed notice was filed as WSR _____; or**
☐ **Proposal is exempt under RCW 34.05.310(4).**

- ☒ **Original Notice**
☐ **Supplemental Notice to WSR _____**
☐ **Continuance of WSR _____**

Title of rule and other identifying information: (Describe Subject)

Revisions to Chapter 173-401 WAC, Operating Permit Regulation.

This rule making proposes amendments to Chapter 173-401 WAC to align Washington's air operating permit rule with the federal Tailoring Rule. Revisions to 40 CFR 70.2 establish thresholds for greenhouse gas emissions that define when a permit is required under the federal Air Operating Permit program.

Hearing location(s):

Department of Ecology
300 Desmond Drive
Lacey, Washington 98503

Date: November 10, 2010 Time: 6:30 pm

Date of intended adoption: December 1, 2010(Note: This is **NOT** the **effective** date)**Submit written comments to:**

Name: Elena Guilfoil
Address: Dept. of Ecology, PO Box 47600, Olympia, WA
98504-7600
e-mail elena.guilfoil@ecy.wa.gov
Fax (360)407-7528 by (date) November 17, 2010

Assistance for persons with disabilities: Contact

Tami Dahlgren at (360) 407-6830 by November 2, 2010
Persons with hearing loss, call 711 for Washington Relay
Service. Persons with a speech disability, call 877-833-
6341.

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Under EPA's Light-Duty Vehicle Rule (adopted May 7, 2010), greenhouse gases become subject to regulation under the federal Clean Air Act beginning January 2, 2011. Because of this deadline, EPA adopted rules in June 2010 (known as the Tailoring Rule) establishing thresholds for greenhouse gas emissions that define when a permit is required under the federal Air Operating Permit program. Chapter 173-401 WAC contains the state rules implementing the federal Air Operating Permit program. Ecology must update the state rule to align with the federal greenhouse gas emissions thresholds in 40 CFR 70.2 by revising the definition of "major source" and adding the definition of "subject to regulation."

The federal rules establish greenhouse gas emission thresholds at 100,000 tons per year or more for each existing Air Operating Permit source beginning on January 2, 2011. Sources currently with an Air Operating Permit must address their greenhouse gas emissions when applying for, renewing or revising their Air Operating Permits. Beginning on July 1, 2011, sources that emit 100,000 tons per year or more of greenhouse gases become subject to the Air Operating Permit Program, regardless of their emissions of other pollutants. These newly subject sources must apply for an Air Operating Permit on or before July 1, 2012.

Reasons supporting proposal:

Ecology must align its rule with the federal rule by January 2, 2011, when the federal greenhouse gas thresholds become effective. Without these new, higher thresholds, many sources in Washington would unnecessarily become subject to federal permits for emitting greenhouse gases at or above 100 tons per year (the existing thresholds for certain criteria pollutants).

Statutory authority for adoption:

RCW 70.94.161 and RCW 70.94.510.

Statute being implemented:

RCW 70.94.161 and RCW 70.94.510.

Is rule necessary because of a:

Federal Law? ☒ Yes ☐ No
Federal Court Decision? ☐ Yes ☒ No
State Court Decision? ☐ Yes ☒ No
If yes, CITATION:
40 CFR 70.2 as revised by
75 Federal Register 31514 on 6/30/2010.

DATE 10/1/10**NAME** Polly Zehm**SIGNATURE****TITLE** Deputy Director, Department of Ecology**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 05, 2010**TIME:** 4:15 PM**WSR 10-20-145**

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:
Not applicable.

Name of proponent: (person or organization)
Washington State Department of Ecology

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Elena Guilfoil	Lacey	(360) 407-6855
Implementation....Crystal Alford	Spokane	(509) 329-3595

Enforcement.....Respective air agency	Office location	Phone
Benton Clean Air Agency	Kennewick	(509) 783-1304
Northwest Clean Air Agency	Mount Vernon	(360) 428-1617
Olympic Region Clean Air Agency	Olympia	1-800-422-5623
Puget Sound Clean Air Agency	Seattle	1-800-552-3565
Southwest Clean Air Agency	Vancouver	1-800-633-0709
Spokane Regional Clean Air Agency	Spokane	(509) 477-4727
Yakima Regional Clean Air Agency	Yakima	1-800-540-6950
Department of Ecology – Central Regional Office	Yakima	(509) 575-2490
Department of Ecology – Eastern Regional Office	Spokane	(509) 329-3400
Department of Ecology – Industrial Section	Lacey	(360) 407-6800

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes

☒ No. Explain why no statement was prepared.
With this rule making, Ecology is updating the state rule to comply with a federal rule, 40 CFR 70.2. Under RCW 19.85.025(3), the requirement to evaluate small business impacts does not apply to a rule adoption that is not required to comply with RCW 34.05.310.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes

☒ No: Please explain:
With this rule making, Ecology is updating the state rule to incorporate requirements in a federal rule, 40 CFR 70.2, without material change. RCW 34.05.328(5)(b)(iii) exempts a rule making from the requirement to prepare a cost benefit analysis for any rule making that adopts federal rules by reference or incorporates federal rules without material change.